IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9706 of 2004
With
CIVIL APPLICATION No. 9706 of 2004
With
CIVIL APPLICATION No. 9714 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANJAR MUNICIPALITY & 4 - Petitioner(s)
Versus
STATE OF GUJARAT & 110 - Respondent(s)

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Appearance :

MR MK VAKHARIA for Petitioner(s) : 1 - 2.
MR KAMAL B. TRIVEDI ADVOCATE GENERAL WITH MS.SANGITA VISHEN ASST GOVERNMENT PLEADER for Respondent(s) : 1, 4,
MR NIKHILESH J SHAH for Respondent(s) : 2,
NOTICE SERVED BY DS for Respondent(s) : 3,
MR NV ANJARIA for Respondent(s) : 5, 9, 11,
MR HARIN P RAVAL for Respondent(s) : 6 - 8.
MR NEERAJ SONI for Respondent(s) : 10, 12,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/07/2006

ORAL JUDGMENT

1. By way of this petition under Article-226 of the Constitution of India, the petitioners – Anjar Municipality and another have prayed for an appropriate writ, direction and/or order directing the respondents i.e. State of Gujarat, Secretary, Urban Development and Urban Housing Department, Anjar Area Development Authority (hereinafter referred to as the "AADA" for short), Collector, Kachchh not to interfere in any manner whatsoever including taking the possession of the open plots i.e. waste land and other public lands situated within territorial limits of Anjar Municipality and also mentioned in Schedule-I to Notification at Annexure-C either from the petitioners or from their lessees or licensees and have also prayed for further direction to restore the possession of any such lands taken from lessees or licensees of the Anjar Municipality.

2. It is the contention on behalf of the

petitioners that the petitioner municipality is constituted under the provisions of the Gujarat Municipalities Act, 1963. The city of Anjar is a part of Kachchh District of Gujarat. That “Kachchh District” was class-(C) city of India till it was merged in Gujarat with effect from 1.5.1960. The Government of India had extended provisions of Bombay Municipal Borough, 1925 to Kachchh by notification dated 13.9.1950. It is the contention on behalf of the petitioners that in pursuance of the provisions of the Bombay Municipal Borough Act, 1925, as extended to Kachchh, the Chief Commissioner of Kachchh has issued notification of proclamation constituting Anjar Municipality. That as per the notification, territorial limits of Anjar Municipality comprise of whole of town within town wall and area outside the town wall. The open lands are comprised of waste lands and other public lands vested in Anjar Municipality as per the provisions of Section-63 of the Bombay Municipal

Borough Act, 1925 as extended to Kachchh. Thus, according to the petitioners, in accordance with the provisions of sub-section-(2) of Section-63 of the aforesaid Act, all the lands not being specially reserved by the State of Gujarat vest and belong to the Municipality. It is submitted that erstwhile Government of Kachchh had not specially reserved any of the open lands i.e. waste lands and other public lands within territorial limits of Anjar Municipality. According to the petitioners, in absence of any specific reservation by the State Government qua any of the open land including waste lands and other public lands, all open lands i.e. waste lands and the other public lands vested in Anjar Municipality as early as in the year 1950. It is further submitted that Kachchh as Class-(C) State remains in existence from 1950 till 1.11.1956 when it was merged in the newly formed bilingual Bombay State under the provisions of States Re-organization Act, 1960 and the Bombay State was

bifurcated and as a result Gujarat State came into existence with effect from 1.5.1960 and the Kachchh became one of Districts of the Gujarat State. In the year 1963 the State of Gujarat enacted Gujarat Municipalities Act, 1963 repealing Bombay Municipal Boroughs Act, 1925 as extended to Kachchh area. By Section-279 of the Gujarat Municipalities Act, the Bombay Municipal Borough Act, 1925 as extended to Kachchh area of Gujarat State was repealed providing that notwithstanding the repeal, all the properties vesting in the old municipality shall, from the said date, vest in the new municipalities. It is submitted that Section-80 of the Gujarat Municipalities Act provides vesting of the property not being specially reserved by the State Government, into Municipality. According to the petitioners, Section-80 is para-materia to Section-63 of the Bombay Municipal Borough Act. It is also further submitted that the State Government issued notification dated 10.11.1989

vesting certain vacant plots of lands within municipal limits of Anjar Municipality as mentioned in Schedule-I of the said notification. By Schedule-II of the aforesaid notification, certain lands were shown as reserved for Government purposes. It is submitted that since the open lands i.e. waste lands and other public lands had already vested in the Anjar Municipality, the aforesaid notification dated 10.11.1989 read with Schedule-I only reasserted vesting of lands in question in Anjar Municipality, however, Schedule-II of the said notification reserving certain lands was cancelled since it amounts to resumption of lands without following the provisions of Section-80 of the Act. Thus, it is the contention on behalf of the petitioners that the Municipality has become the absolute owner of the open waste ands and other public lands not specially reserved by the State Government i.e. all the lands mentioned in Schedule-I of the aforesaid Notification dated

10.11.1989 and the Municipality has become absolute owner of the aforesaid lands. It is submitted that the petitioner municipality has leased certain lands considering to be the owners of the lands on the basis of the Government Notification dated 10.11.1989 and even prior thereto and now the respondents are likely to disturb the possession. It is submitted that the respondent No.2 – AADA and its officers are likely to interfere with the properties belonging to the Anjar Municipality as well as the properties given on lease by the petitioner Municipality and some of the lessees have filed Special Civil Application Nos.14953, 14579, 15048, 15059 and 1841 of 2003 before this Court which according to the petitioners as mentioned in the petition, are pending. It is submitted that the respondents have no power, authority and any competence to divest the ownership of the lands vested in the Anjar Municipality and likewise, the respondents have no power to

interfere with or divest the lessees who were given the lands on lease by the petitioner Municipality. It is therefore submitted that the petitioners challenge the actions of the respondents in taking over possession of the lands belonging to Anjar Municipality and/or treating the open lands and / or other public lands as the lands belonging to the State Government.

3. Shri Vakharia, learned senior advocate appearing on behalf of the petitioners has heavily relied upon Section-63 of the Bombay Municipal Borough Act; Section-80(2) of the Gujarat Municipalities Act and the Government Notification dated 11.11.1989 and Schedule-I to the said notification in support of his above submissions. It is submitted that all the lands mentioned in Schedule-I and except the plots and lands described in Schedule-II to the aforesaid notification, vest absolutely in the Anjar

Municipality. It is also the contention of Shri Vakharia that as all the open plots / lands within municipal limits except those which are specifically reserved by the Gujarat Government for its own purposes i.e. all the plots mentioned in Schedule-I, vest absolutely and the Municipality has become the absolute owner.

4. Shri Vakharia, learned senior advocate appearing on behalf of the petitioners has also relied upon the judgment of this Court in case *PORBANDAR NAGARPALIKA V. STATE OF GUJARAT AND OTHERS* reported in 1991 (2) GLR 991 and has submitted that this Court in the aforesaid case has held that considering the provisions of Section-50 of the Act and the notification, all the open plots and the lands situated within municipal limits of Nagarpalika vest in and belong to it and therefore, it has right to dispose of the same by sale, lease, etc of course subject to the provisions and for the purpose of the Act. He has also further submitted that

unless the lands are resumed by the State Government, all open plots and lands continue to be ownership of the municipality and in the present case, no order of resumption has been passed by any competent authority and/or the State Government and therefore, it is not open for the respondents, more particularly, the respondent No.2 to take possession of the lands / properties occupied by the lessees / licensees of the petitioner No.1 Municipality and therefore, it is requested to allow the present Special Civil Application.

5. Shri Vakharia, learned senior advocate for the petitioners has also relied upon the decision of the Hon'ble Supreme Court in case of *MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS V. HINDUSTAN PETROLEUM CORPORATION AND ANOTHER* reported in (2001) 8 SCC 143 in support of his submission that “vesting” means “absolutely vesting” and has submitted that by long usage “vesting originally” means having obtained and

“absolutely indefeasible rights” and therefore, it is requested to allow the present Special Civil Application and grant the relief as prayed for.

6. Lastly, Shri Vakharia, learned senior advocate for the petitioners has also relied upon the order passed by the learned Single Judge of this Court passed in Civil Revision Application No.66 of 1997 and has submitted that the learned Single Judge of this Court has also observed and held that the Nagarpalika has become absolute owner of the suit property as the suit land was vested in the Nagarpalika.

7. The petition is opposed by the State Government as well as AADA.

8. Shri Kamal B. Trivedi, learned Advocate General with Ms.Sangita Vishen, learned AGP appearing on behalf of the respondent – State of

Gujarat has submitted that considering the relief sought in the present Special Civil Application and the pleadings in the petition, so also, the averments with regard to the plots which are leased out are too vague and / or as such, no details are given with regard to the plots, and lessees etc. It is submitted by him that on the basis of the Government notification dated 10.11.1989, by which, in exercise of the powers under sub-section-(2) of Section-80, certain lands mentioned in Schedule-I to the said notification were vested in Anjar Municipality, cannot be said that the said lands are absolutely vested in the Anjar Municipality and Municipality and Anjar Municipality can deal with the said lands in the way it likes. It is submitted that the lands have been vested by the aforesaid Government Notification dated 10.11.1989 subject to the terms and conditions laid down in the Government Resolution dated 22.4.1982 and still, the petitioners has chosen not to produce the

said notification dated 22.4.1982 though the Municipality is aware of the said Government Resolution dated 22.4.1982. Relying upon the Government notification dated 22.4.1982, it is submitted that the lands have been vested in the Municipality for the direction, administration, management and control of the government lands and even plots / lands cannot be leased, sold or transferred in any other manner by the municipality to anybody without previous written permission of the competent authority. It is also further submitted that if it is found that the municipality has failed to maintain the lands / plots in good condition and/or when the said lands have been encroached upon, and the Municipality fails to remove such encroachment, such lands would revert to Government. It is also further submitted that the Municipality is required to use the plots / lands only for the purpose for which they are meant and assigned. Under the circumstances, it is submitted that it

cannot be said that so far as the lands mentioned in Schedule-I to the Government Notification dated 10.11.1989, the Anjar Municipality has become absolute owner without any conditions and they can lease or sale the plots as they like.

9. It is also further submitted by Shri K.B.Trivedi, learned Advocate General that even as per the Government Resolution dated 10.11.1989, the vacant plots and/or lands mentioned in Schedule-I are vested under the direction, management and control of the Municipality and held by it as trustees subject to the provisions and for the purpose of the Municipality Act and subject to the terms and conditions laid down in the Government Resolution dated 22.4.1982. He has relied upon the decision of this Court in case of *KANTILAL DHARAMADAS KACHORIYA V. CHIEF OFFICER, PALANPUR NAGAR PALIKA & ORS* reported in 27(2) GLR 1214; in case of *BHAGUBHAI H. DEVANI V. PORBANDAR MUNICIPALITY AND OTHERS* reported in AIR 1984 Gujarat 134 and in

case of *K.C.PATEL V. STATE OF GUJARAT AND OTHERS* reported in 1998 (4) GCD 2914 (Guj) in support of his submission that the lands held by the Municipality on the basis of such vesting is as trustee and the Municipality cannot be said to be absolute owner of the lands which are vested in the Municipality in exercise of the powers under Section-80(2) of the Gujarat Municipalities Act. Shri K.B.Trivedi, learned Advocate General has also relied upon the decision of the Hon'ble Supreme Court in case of *MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS V. HINDUSTAN PETROLEUM CORPORATION AND ANOTHER (Supra)* and has submitted that “vesting” means vesting in possession and “vesting” did not convey a free hold title. Shri Trivedi, learned Advocate General has also relied upon the observations made in Para-13 of the said decision. Shri Trivedi, leraned Advocate General has relied upon unreported decision of this Court in case of *ANJAR MUNICIPALITY VS. STATE OF GUJARAT* rendered in Special Civil Application No.1080 of 2000

dated 27.12.2005 as confirmed by the Division Bench of this Court and has submitted that with regard to the certain lands of the very Municipality, it has been held by the learned Single Judge even considering the judgment in case of *PORBANDAR NAGARPALIKA V. STATE OF GUJARAT AND OTHERS, 1991 (2) GLR 991,* that the Municipality does not become the absolute owner of the said lands and therefore, it is requested to dismiss the present Special Civil Application.

10. Shri Nikhilesh J. Shah, learned advocate appearing on behalf of the respondent Nos.2 & 3 i.e. appropriate authority under the provisions of the Gujarat Town Planning Act, has submitted that with respect to certain lands mentioned in Schedule-I to Annexure-C, after devastating earthquake which took place on 26.1.2001, the Town Planning Schemes have been implemented and certain plots were subject to final town planning scheme and once the final scheme is made, all the

rights are to be determined as per the scheme. It is submitted that even those lessees who are referred to above, preferred Special Civil Applications whose numbers are mentioned in main Special Civil Application are concerned, all those petitions are dismissed by this Court. It is submitted that at no point of time, neither Municipality, nor the lessees have challenged the Town Planning Scheme and even in the present Special Civil Application also, apart from the fact that no particulars are given with regard to each survey number, lessees etc. even Town Planning Schemes have not been challenged and whatever action is taken by the respondent No.2, is under the finalized town planning scheme. Under the circumstances, it is requested to dismiss the present Special Civil Application.

11. Heard the learned advocates appearing on behalf of the parties.

12. The petitioners claim that considering the provisions of Section-63 of the Bombay Municipal Borough Act, Section-80(2) of the Gujarat Municipalities Act and the Government notification dated 10.11.1989, the petitioner No.1 – Anjar Municipality has become absolute owners of the open plots / lands within municipal limits except those which are specifically reserved by the Government for its own purpose. It is also the contention on behalf of the petitioners that all the lands have been vested absolutely and they can deal with the aforesaid lands and/or they can lease and sale the aforesaid plots as they like. Sub-Section-(2) of Section-80 of the Gujarat Municipalities Act which is para-materia to Section-63 of the Bombay Municipal Borough Act provides that all the properties of the nature specified in the clause to the said Section, not being specially reserved by the State Government shall vest and belong to the Municipality and shall, together with all

other property of the nature or kind so ever, which may become vested in the Municipality, be under its direction, management and control, and shall be held and applied by it as trustees, subject to the provisions and for the purpose of the Gujarat Municipalities Act. Sub-section-(2) (e) of Section-80 provides for vesting of all the lands and public buildings transferred to it by the Government by gift or otherwise, for local public purposes. Proviso to Section-80 provides that the lands and public buildings transferred to the Municipality by the State Government under clause (e) shall not unless otherwise, expressly provided in the instrument of transfer, belong by right of ownership to the municipality but shall vest in it subject to the terms and conditions of the transfer and on the breach of any of the said terms or conditions, the lands with all things attached thereto, including all fixtures and structures thereon, and the public buildings shall re-vest in the State Government and it

shall be lawful for the State Government to resume possession thereof. Thus, even Section-80 provides that transfer of such lands and buildings shall be subject to the terms and conditions of the transfer. Notification dated 10.11.1989 upon which reliance is placed by the learned advocate appearing on behalf of the petitioners provides that the Government vested in Anjar Municipality all vacant plots and lands situated within limits (existing on 31.12.1980) of the said Municipality and belonging to the Government mentioned in Schedule-I for local public purposes except the plots and lands described in Schedule-II which are reserved by the government. Clause-4 of the said notification reads as under :

> “4. *The said vacant plots and lands mentioned in Schedule No.I*
> *(a) shall be under the direction, management and control of the aid Municipality and held and applied by it*

as trustees subject to the provisions and for the purpose of the said Act.

(b) shall belong to said Municipality and be used by it for local public purpose or could be disposed off by it subject to the terms and conditions mentioned in GR RD NO. NPJ/1002 51343-G.1 dated 22.4.82 and the proceeds derived from the said or such plots and lands be utilized by the said Municipality for the purposes of the said Act.

[c] shall be vested subject to the terms and conditions laid down in GR RD No.NPJ-1082 /51343-G.1 dated 22.4.82."

Thus, the transfer of the plots and lands described in Schedule-I to the said notification is subject to the conditions that the said lands shall be held by the Municipality as trustees subject to the provisions and for the purpose of Gujarat Municipalities Act and shall belong to

the said Municipality and be used by it for local public purposes or could be disposed off by it subject to the terms and conditions mentioned in GR RD No.NPJ-1082/51343-G.1 dated 22.4.1982 and all the aforesaid plots and lands shall be vested to the subject to the terms and conditions laid down in the aforesaid Government Resolution dated 22.4.1982. Thus, the transfer and vesting of all the plots and the lands mentioned in Schedule-I to the Government notification dated 10.11.1989 were subject to the terms and conditions laid down in the Government Resolution dated 22.4.1982. Though the petitioners have not produced the Government Resolution dated 22.4.1982, the same has been produced by the State Government along with its affidavit-in-reply. The relevant terms and conditions provided under the Government Resolution dated 22.4.1982 reads as under :

> *“[3.2] The Municipality / Municipal Corporation shall use the plots / lands only*

for the purpose for which they are meant or assigned.

[3.4] The plots /lands shall not be leased, sold or transferred in any other manner by the Municipality / Municipal Corporation to any body without the previous written permission of the Competent Authority.

[3.5] The Municipality / Municipal Corporation shall maintain the lands / plots in good conditions and shall not allow any encroachment on them. Such vested lands if found encroached and if the Municipality / Municipal Corporation fails to remove such encroachments, such lands would revert to Government.

[3.6] Breach of any of the conditions shall render the lands / plots liable for unconditional resumption by Government without payment of any compensation.

[3.7] The vesting of the lands / plots is subject to the condition that they are liable to be resumed by Government at any time if they are required by Government at any time if they are required by Government for any purpose.

[3.8] The Collector or Competent Authority may impose any other suitable conditions in respect of any particular lands / plots if they are considered necessary and desirable by him.

[3.11] The Municipality / Municipal Corporation shall obtain the prior permission of the Government / Competent Authority before disposal of such vested lands / plots.

[3.13] The lands / plots so vested in Municipality / Municipal Corporation could be disposed off by such Municipality /

Municipal Corporation by way of lease or sale after ascertaining its own requirements as well as any Government department / office, public institutions and corporation bodies / corporation etc. during the ensuring period of 10 years. Only after such ascertainment, Municipality / Municipal Corporation would dispose off such lands / plots with the prior written permission of and subject to the terms and conditions that may be prescribed in this respect by the Government or competent authority."

13. On consideration of the aforesaid conditions, it cannot be said that the aforesaid lands are vested in the Municipality absolutely. On fair reading of the Government Notification dated 10.11.1989 read with Government Resolution dated 22.4.1982 the aforesaid lands mentioned in Schedule-I to the Government notification dated 10.11.1989 are vested subject to the terms and

conditions imposed vide Government Resolution dated 22.4.1982 i.e. the Municipality shall use the plots / lands only for the purpose for which they are meant or assigned; the plots / lands shall not be leased, sold or transferred in any other manner by the Municipality to anybody without previous written permission of the competent authority and the Municipality shall maintain the lands / plots in good conditions and shall not allow any encroachment on them and such vested lands if found encroached and if the Municipality fails to remove such encroachments, such lands would revert to Government; the Municipality to obtain prior permission of the Government / competent authority before disposal of such aforesaid lands / plots; and the lands/plots so vested in the Municipality could be disposed of by such municipality by way of lease or sale after ascertaining its own requirement as well as of any Government department / office, public institutions and

corporate bodies / Corporation etc. during the ensuing period of ten years and only after such ascertainment, the municipality would dispose of such lands / plots with prior written permission of and subject to terms and conditions that may be prescribed in this respect by the Government or the competent authority. Therefore, the contention on behalf of the petitioners that the lands which are vested and/or transferred in exercise of the powers under sub-section-(2) of Section-80 i.e. all the lands mentioned in Schedule-I to the Notification dated 10.11.1989 are absolutely vested and/or petitioner Municipality can deal with the said lands / plots either by way of lease, sale etc., cannot be accepted. The lands which are vested are subject to the terms and conditions as mentioned in the Government Notification dated 10.11.1989 as well as the Government Resolution dated 22.4.1982. It is also required to be noted that even after the notification dated 10.11.1989, a further

consequential order was passed by the Collector, Kachchh dated 30.1.1990 vesting and/or transferring the lands / plots mentioned in Schedule-I to the Government Notification dated 10.11.1989 specifying or imposing the conditions which are in fact imposed vide Government Resolution dated 22.4.1982 and the said order has become final and / or the petitioner has not challenged the same. Therefore also, the contention on behalf of the petitioners with regard to ownership of the lands so transferred or vested cannot be accepted.

14. So far as reliance placed upon the decision of this Court in case of *Porbandar Municipality (Supra)* by the learned advocate appearing on behalf of the petitioners is concerned, it is required to be noted that in the facts of the said case it was pleaded on behalf of the State Government that open plots / lands including Survey Numbers and Kharaba belong to the

Government though vested in the Municipality, do not vest in the Municipality absolutely and therefore, it is open for the Government to dispose of those plots. The same is not the controversy and/or contention on behalf of the respondents – State Government in the present Special Civil Application and therefore, the said cited decision in my opinion is not applicable to the facts of the present case. So far as the reliance placed upon the decision of the Hon'ble Supreme Court in case of *MUNICIPAL CORPORATION OF GREATER BOMBAY AND OTHERS V. HINDUSTAN PETROLEUM CORPORATION AND ANOTHER (Supra)* and the contention on behalf of the petitioners that by long usage “vesting” means having obtained and absolutely and an indefeasible rights, it is required to be noted that the judgment is to be read as a whole. It is also observed that it might be in an appropriate case the “vesting” can be a “vesting in possession only”, but so far as the present case is concerned, even notification by which the

lands are vested is conditional one and subject to the terms and conditions as per the Government Resolution dated 22.4.1982 and neither the said notification, nor the subsequent consequential order passed by the Collector, Kachchh dated 30.1.1990 imposing conditions are challenged by the petitioner municipality and even as stated hereinabove, proviso to sub-section-(2) of Section-80 provides that such transfer will be subject to the terms and conditions of the said transfer. So far as the judgment cited on behalf of the State Government to the effect that the Municipality holds the lands as trustees and therefore, it cannot be said that the plots are vested absolutely are concerned, as stated hereinabove, the said aspect is not required to be considered as the terms and conditions of the Government notification dated 10.11.1989 and the consequential order of the Collector, Kachchh dated 30.1.1990 and sub-section-(2) of Section-80 are very clear and it is held and observed that

the open plots / lands mentioned in Schedule-I to the Government Notification dated 10.11.1989 are not vested absolutely, but they are vested subject to the terms and conditions as mentioned in the Government Notification dated 22.4.1982 and the restrictions imposed thereon.

15. On going through the pleadings, it is not clear that for what purpose the present Special Civil Application was filed for the aforesaid relief against the respondent No.1, inasmuch as, all the averments and allegations are against the respondent No.2 and the appropriate authority under the Town Planning Act. It appears that after devastating earthquake which took place on 26.1.2001, there are four town planning schemes so far as the Anjar Town is concerned and some of the lands which are out of the lands mentioned in Schedule-I to the Government Notification dated 10.11.1989, are subject to and part of the aforesaid scheme and their boundaries are changed

and final plots are given and some of the plots were occupied by some private persons as lessees and those lessees were required to be evicted for the purpose of implementation of the Town Planning Scheme and for the benefit of those persons / lessees who have preferred writ petitions being Special Civil Application Nos.14953, 14579, 15048, 15059 and 1841 of 2003 before this Court, the present Special Civil Application has been filed by the Municipality for their benefits. So far as the other lands are concerned, it appears that no cause of action has arisen as no particulars are given in the petition pointing out any action by the State Government and/or order by the State Government for which the present Special Civil Application is filed. The petition does not disclose any cause of action for the relief which are sought in the present Special Civil Application. On the contrary, it appears that general prayer is made with regard to all the plots / lands mentioned in

Schedule-I to the Government Notification dated 10.11.1989 without giving any particular instance/s. So far as some four to five plots which are subject to the Town Planning Scheme and which has now become final plots either they are reserved for some purpose and/or which is going under 6 meters wide road under the finalized town planning scheme or for some other purpose and the said lands occupied by the lessees are concerned, apart from the fact that all the aforesaid Special Civil Applications filed by the respective lessees are dismissed by this Court, nothing is on record to show that before finalization of the town planning scheme, the Municipality has ever submitted any objection/s either at the time of draft scheme or preliminary scheme and the petitioner municipality has allowed the town planning scheme to become final. As held by the Full Bench of this Court in case of *SAIYED MOHAMMMED ABDULLAMIYA URAIZEE (since deceased by his successor) and others v. AHMEDABAD MUNICIPAL*

CORPORATION AND OTHERS, [1977] GLR 549, considering Section-53, 54 and 55 of the Bombay Town Planning Act which are para-materia to Section-67 and 68 of the Gujarat Town Planning Act, on finalization of the Town Planning Scheme, the lands absolutely vest in the appropriate authority and once finalized scheme is made, all the rights are determined and such persons occupying right after his rights, are seized, can be summarily evicted. Under the circumstances, so far as those open lands / plots mentioned in Schedule-I to the Government Notification dated 10.11.1989 which are within the Town Planning Scheme and subject to town planning schemes are concerned, it is not open for the petitioners to claim any right as now the rights are to be considered on the basis of finalized town planning scheme. It is required to be noted that in the petition, neither any of the Town Planning Schemes has been challenged, nor there is any reference to the town planning scheme and a

general prayer is made by mentioning the rights of some of the lessees who have filed the aforesaid Special Civil Applications which are dismissed.

16. So far as reliance placed on the order passed by the learned Single Judge of this Court rendered in Civil Revision Application No.66 of 1997 is concerned, it is required to be noted that it was arising out of the order passed below Exh.5 and relying upon the some Panchnama, the aforesaid observation is made. No particulars are given with regard to the Panchanama and even otherwise, on the basis of the Panchanama how finding can be given at the interim stage that the Nagarpalika has become absolute owner. However, so far as the present petition is concerned, the Government Notification dated 10.11.1989 and provisions of Section-80(2) of the Gujarat Municipalities Act are very much clear and as stated above, the lands are vested subject

to the terms and conditions as mentioned in Government Resolution dated 22.4.1982.

17. For the reasons stated in the foregoing paragraphs, the prayer of the petitioners that the plots / lands mentioned in Schedule-I to the Government Notification dated 10.11.1989 absolutely vest in the Municipality, cannot be granted and it is held that the aforesaid lands have been vested in the petitioner Municipality subject to the terms and conditions mentioned in the Government Notification dated 10.11.1989 and the Government Resolution dated 22.4.1982 and the order passed by the Collector, Kachchh dated 30.1.1990.

18. In view of above discussion, the present Special Civil Application is dismissed. Rule is discharged. However, there shall be no order as to costs.

[M.R.Shah, J.]

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